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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 CHARLES GORMAN, *et al.*,

10 Plaintiffs,

11 v.

12 NATIONAL CITY HOME LOAN
13 SERVICES, INC.,

14 Defendant.

Case No. C06-618RSL

ORDER GRANTING REQUEST
FOR ADDITIONAL BRIEFING

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16 This matter comes before the Court on a motion for summary judgment filed by
17 defendant National City Home Loan Services, Inc. ("National City"). (Dkt. #13). Plaintiffs,
18 who are suing on behalf of themselves and all others similarly situated, allege that National City
19 charged them a \$15 fee not authorized by their loan documents for faxed delivery of mortgage
20 loan payoff statements. Defendant alleges that all of plaintiffs' claims must be dismissed
21 because they are preempted by regulations of the United States Treasury Department, Office of
22 the Comptroller of the Currency ("OCC"). Defendant submitted a letter, dated August 21, 2006,
23 with its reply memorandum from the OCC's First Senior Deputy Comptroller and Chief Counsel
24 opining that the fax fee is consistent with OCC regulations. Ordinarily, the Court does not
25 consider new evidence presented for the first time with a reply. In this case, however, the letter
26 was drafted after defendant filed its motion, though defendant has not explained whether it could
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1 have sought the letter sooner. Also, the letter appears to be probative and the Court prefers to
2 consider issues with the benefit of a complete record. Therefore, the Court will consider the
3 letter and allow plaintiffs an opportunity to respond to it. Plaintiffs have not requested
4 additional time to conduct discovery regarding the letter, so an additional two weeks should be
5 ample time to respond.

6 In its surreply, plaintiffs also requested the opportunity to respond to a second issue.
7 Plaintiffs filed with their response a declaration from Professor Arthur Wilmarth. In its reply,
8 defendant argued that the declaration should be stricken because Professor Wilmarth purports to
9 be a legal expert, invading the province of this Court. Plaintiffs have requested an opportunity
10 to respond to that argument. The Local Rules do not permit a response, and the Court does not
11 need any additional briefing on that issue.

12 Accordingly, plaintiffs may submit an additional memorandum, not to exceed 6 pages, by
13 September 29, 2006 which addresses the OCC letter. No further briefing will be accepted on the
14 issue. The Clerk of the Court is directed to renote National City's Motion for Summary
15 Judgment (Dkt. #13) on the Court's calendar for September 29, 2006.

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17 DATED this 15th day of September, 2006.

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20 Robert S. Lasnik
21 United States District Judge
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